IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 434 OF 1993

Shabbir Shaikh Abdul Aziz ..Appellant

versus

1. Bajirao Rambhau Tile
2. Sayyed Ajij Sarfuddin
3. New India Assurance Co. Ltd.
4. The Nashik People Co-op. Bank Ltd., Nashik ..Respondents

Mr. S. Waghmare i/b. V. Z. Kankaria for the Appellant.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 11TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the appellant. Nobody is present for the respondents. So far as respondent Nos. 1 and 2 is concerned, there is an order that the matter stands dismissed against them. Therefore this order will affect respondent Nos. 3 and 4.

2. The appellant was the original claimant

before the Motor Accident Claim Tribunal, Nashik, he had filed claim petition claiming Rs.1 lac vide Claim Petition No. 367 of 1988 on account of serious injuries sustained by him in the incident that took place on 5.9.1988 at about 1.30 p.m. near Datta Mandir on Nashik Pune Road when his auto rickshaw bearing No. MHS 7459 was dashed by taxi No.MTS-1671 coming from opposite direction, which belonged to the respondent - original opponent No.1 and original Opponent No.2. The Original Opponent No.2 was the driver at that time and it was insured with The New India Assurance Co. Ltd. Nashik.

3. In the accident the appellants suffered 12% permanent disability. He examined two doctors in support of his contention, viz. Dr. Subhash Siddhapure CW2 at Exhibit 47 and Dr. Sunil Shah CW 3 at Exhibit 53. Both the doctors testified that because of the accident of right ankle the appellant had to be operated upon nails had to be inserted and this affected his capacity of walk to the extent of 12%. and it is a permanent disability. Both of them testified that the claimant will not be in a position to drive auto rickshaw properly and he will have pain and suffering while applying brakes.

4. The Tribunal awarded him in all Rs.11,600/- as compensation and deducted Rs.7,500/- awarded to

him under no fault liability. The amount of Rs.11,600/- was arrived at by the Tribunal in the following manner.

5. The income of the appellant was taken as Rs,900/- per month. He could not work for four months, therefore he was granted Rs.3,600/-. then Rs.1,000- were awarded as medical expensens, then Rs.2,000/- were awarded as mental agony and suffering and Rs.5,000/- towards the permanent disability.

6. It is clear that the Tribunal had not considered the matter in proper perspective. If the claimant has suffered permanent disability to the extent of 12% then it was bound to result in affecting his earning and income in future at least for a period of 10 years. Though disability was to be with him till he is lived. Therefore, if this aspect is considered and Rs.900/- per month is taken to be the income of the claimant, then the income for 10 years in future would be Rs.900x12x10 = Rs.1,08,000/-. If 12% is the permanent disability then the claimant would be loosing his income to the extent of Rs.13,000/- during this period, to make it wrong figure it would be Rs.15,000/-. Therefore the claimant is entitled to an amount of Rs.15,000/- on this ground. Since Rs.5,000/- is already granted he

will be entitled to Rs.10,000/- more.

7. Secondly for mental agony and suffering due to accident, the Tribunal has awarded a meager amount of Rs.2,000/- If claimant who was a rickshaw driver was required to be bed ridden for four months and undergo suffering and pain then atleast Rs.7,000/- on that count should have been awarded to him. The Tribunal has awarded him only Rs.2,000/-. Therefore he is entitled to additional amount of Rs.5,000/- on that count. Compensation granted on other Heads is proper and no interference is called for. Therefore, the Appellant - Claimant will be entitled to get Rs.10,000/- + Rs.5,000/-, in addition from the Respondents.

8. In the result, I pass the following order:

ORDER

. Appeal is partly allowed.

. Order of the Tribunal is modified. Respondent No.3 will pay Rs.15,000- in addition to whatever has been awarded by the Tribunal to the claimant with 9% interest from the date of application till payment and also costs of this

Appeal.

11.2.2005 (D.G. DESHPANDE,J.)